IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

WP(C).No. 3897 of 2007(L)

OS.1375/2005 of I ADDL.M.C.,ERNAKULAM
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PETITIONER:

ST. JOSEPH AVASATHA NIVARANA SANGAM,
PONEL, EDAPPALLY, REPRESENTED BY ITS SECRETARY,
A.J.THOMAS MATHEW, AGED 52 YEARS,
S/O. LATE DR. JAMES PILATE, AVITTOMPILLY HOUSE,
PONEKKARA, ERNAKULAM, KOCHI-26.

BY ADV. SRI.JOHNSON ABRAHAM
SRI.S.GOPINATHAN
SRI.NELSON ABRAHAM

RESPONDENTS:
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1. P.S.GIREESH,
H.NO.33/1034, HALIFAX, PUTHUKALAVATTOM,
ELAMAKKARA P.O., KOCHI-682 026.

2. K.JAYACHANDRAN NAIR, S/O. KRISHNANKUTTY
PILLAI, 33/2547B, SOUPARNIKA,
CHAKKARAPARAMBU, THAMMANAM P.O., KOCHI-32.

3. A.X.JOSEPH,
APPAPARAMBIL HOUSE, PARAYIL ROAD,
ELAMAKKARA P.O., KOCHI-682 026.

4. P.Y.KABEER, S/O. P.A.YOUSAF,
PAINAYIL VEEDU, PERUMPOTTA ROAD,
ELAMAKKARA P.O., KOCHI-682 026.

5. THE DISTRICT COLLECTOR,
ERNAKULAM DISTRICT, CIVIL STATION,
KAKKANADU, KOCHI-30.

BY GOVERNMENT PLEADER SMT. R. BINDU.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT. P1 TRUE PHOTOCOPY OF CERTIFICATE ISSUED BY SUB REGISTRAR, SRO, EDAPPALLY.

EXT.P2 TRUE PHOTOCOPY OF AGREEMENT EXECUTED BY DEFENDANTS AS BIDDER AND GUARANTORS FOR REPAYMENT OF REMAINING INSTALLMENTS.

EXT.P3 TRUE PHOTOCOPY OF EXPARTE AFFIDAVIT FILED BY THE PLAINTIFF IN OS 1375/05, 1ST ADDL. MUNSIFF'S COURT, ERNAKULAM.

EXT.P4 TRUE PHOTOCOPY OF ORDER DATED 28.8.06 IN O.S. 1375/05 OF 1ST ADDL. MUNSIFF'S COURT, ERNAKULAM.

EXT.P5 TRUE PHOTOCOPY OF ORDER DATED 2.11.06 IN I.A.7887/06 IN O.S.1375/05 OF 1ST ADDL. MUNSIFF'S COURT, ERNAKULAM.

EXT.P6 TRUE PHOTOCOPY OF ORDER DTD. 10.11.06 IN O.S. 1375/05 OF 1ST ADDL. MUNSIFF'S COURT, ERNAKULAM.

[True copy]

P.A. to Judge.

M.N. KRISHNAN, J.

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W.P.C. NO. 3897 OF 2007

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Dated this the 28th day of May, 2007.

J U D G M E N T

The challenge in this writ petition is against Ext.P4 order. The learned Munsiff had held that Ext.A1 is sought to be marked as a chitty variola as envisaged under Art.19 of the Kerala Stamp Act. It is a well known factor that chitty variola is some thing which govern the foremen and subscribers of the chitty. It gives the terms of contract. Here, what is sought to be marked is Ext.A1, which is produced as Ext.P2 in this writ petition, is only an agreement entered into between the foreman and the successful bidder and the sureties. As per the said agreement the successful bidder and the sureties undertake to pay the balance amount due under the kuri in instalments and also undertake that in case of default they can be proceeded against. The said Ext.P2 is styled as a kuri agreement and it only requires to be engrossed on Rs.50/- stamp paper. It is done so. So, the order under challenge namely Ext.P4 is incorrect. Therefore, it is set aside as it does not require any further stamp duty or penalty. I direct the learned Munsiff to call back the document which has been impounded and proceed with the matter in accordance with law.

M.N. KRISHNAN, JUDGE.

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